

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BRAULIO THORNE *on behalf of himself and all other persons similarly situated,* :
Plaintiff, : 19-cv-10402 (LJL)
: ORDER
-v- :
GODIVA CHOCOLATIER, INC., :
Defendant. :
----- X

LEWIS J. LIMAN, United States District Judge:

The Court stayed this case pending a decision by the Second Circuit on appeals before it concerning the same issues and arguments raised in this case. Dkt. No. 33. At the time, Defendant had filed a motion to dismiss the complaint for failure to state a claim and lack of standing. Dkt. No. 26. No answer had been filed.

On June 2, 2022, the Second Circuit issued a decision in the consolidated appeal *Calcano v. Swarovski N. Am. Ltd*, No. 20-1552, 2022 WL 1788305 (2d Cir. June 2, 2022). In *Calcano*, the Second Circuit held that plaintiffs’ “conclusory claims” that they intended to return to Defendants’ stores were not sufficient to allege standing. *Id.* at *6. The mandate has now issued. See *Calcano v. Swarovski*, No. 19-cv-10536-GHW, at ECF. No. 30.

It is hereby ORDERED that within 30 days of this Order, Plaintiff shall submit a letter indicating whether he intends to amend his complaint in light of the Second Circuit's decision in *Calcano* or whether he will stand on his original complaint. If Plaintiff intends to amend his complaint, he shall have 45 days after the issuance of this Order to do so. In the event that Plaintiff amends his complaint, Defendant may either move against the amended complaint or may answer. In the event Plaintiff does not amend his complaint, Defendant must indicate—within 14 days of Plaintiff informing the Court that he does not wish to amend or after his time for doing so has run—whether it wishes to renew the motion to dismiss denied without prejudice at Dkt. No. 33 or answer.

The Clerk of Court is respectfully directed to lift the stay in this case.

SO ORDERED.

Dated: July 18, 2022
New York, New York

LEWIS J. LIMAN
United States District Judge

